



Should the Sunday Laws of Our Country Be Changed to Meet the Demands of Our
Cosmopolitan Population?

Author(s): Irving E. Campbell

Source: *The Virginia Law Register*, Vol. 10, No. 8 (Dec., 1904), pp. 682-689

Published by: Virginia Law Review

Stable URL: <http://www.jstor.org/stable/1099909>

Accessed: 29/06/2010 00:15

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=vlr>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Virginia Law Review is collaborating with JSTOR to digitize, preserve and extend access to *The Virginia Law Register*.

<http://www.jstor.org>

**SHOULD THE SUNDAY LAWS OF OUR COUNTRY BE
CHANGED TO MEET THE DEMANDS OF OUR
COSMOPOLITAN POPULATION?**

By IRVING E. CAMPBELL, Richmond, Va.

In discussing the modification of our Sunday laws we must consider their history and the principles upon which they rest. The theory of our Sabbath legislation now generally accepted by our courts is an element of jurisprudence peculiarly our own.

From the time of Constantine to the formation of the American Republic these statutes bore the sanction of religious obligation, as well as of civil duty; and the Sabbath was therein classed with the other feast days of the church. This was the natural outcome of the union of church and state. There seems to have been but one exception during this time, which is found in the laws of Rhode Island Colony under Roger Williams. But upon the establishment of our present government, with its religious freedom and separation of the ecclesiastical from the civil authority, these laws were so modified as to make rest, rather than religion, their chief aim, and the church days, other than Sunday, were dropped from the statutes, as were other religious requirements. These laws, which long existed as Christian institutions, are now construed to be but economic regulations for the civil welfare of the people. It is difficult, however, to follow this theory to its ultimate conclusions without violating that very religious freedom which it endeavors to maintain. Judge Cooley says:¹ "It appears to us that if the benefit to the individual is alone to be considered, the argument against the law which he may make who already observed the seventh day of the week, is *unanswerable*."

The fact is, that perfect freedom of religious practice is as impossible in this country as is perfect civil liberty. Each must be exercised with reference to the rights of our neighbor; and where there is conflict, the wishes of the majority must govern. So the Christian sentiment of the great majority of our people must, in this matter, prevail. And there is high authority for the proposi-

¹ Con. Lim. 477.

tion that there is in these laws an element of Christianity as well as economics.

Mr. Justice Story, the most scholarly judge which our country has produced, declares: "Probably at the time of the adoption of the constitution, and the amendment now under consideration (the first amendment), the general, if not the universal sentiment in America, was that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation." Again the same learned justice says: "The real object of the amendment was not to countenance, much less to advance, Mahometanism or Judaism, or infidelity by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which would give to a hierarchy the exclusive patronage of the national government."²

It is observed by an appellate court of Missouri, that justification of Sunday laws on economic grounds was an "afterthought of the courts."³

That Christianity constitutes an element of our jurisprudence can scarcely be denied when the Supreme Court of the land, after a full consideration of this question in the *Holy Trinity Church Case*,* holds, in a unanimous opinion, "*that this is a Christian nation.*"

Daniel Webster, in his argument before the Supreme Court in the *Girard Case*, uses this language: "There is nothing which we look for with more certainty than this general principle, that Christianity is part of the law of the land. . . . Where there is a religious sentiment amongst men at all, this sentiment incorporates itself with the law. *Everything declares it.* The massive cathedral of the Catholic; the Episcopalian church, with its lofty spire pointing heavenward; the plain temple of the Quaker; the log church of the hardy pioneer of the wilderness; the mementoes and memorials around and about us; the consecrated graveyards, their tombstones and epitaphs, their silent vaults, their mouldering contents; all

² Story on Const. 1874, 1877. ³ St. Joseph v. Elliott, 47 Mo. Ap. 418. * 143 U. S. 457, 470.

attest it. *The dead prove it as well as the living.* The generation that has gone before speak to it, and pronounce it from the tomb. We feel it. All, all, proclaim that Christianity—general, tolerant Christianity—Christianity independent of sects and parties, that Christianity to which the sword and fagot are unknown—general, tolerant Christianity—is the law of the land.”

Whatever may have been the grounds of the decisions of our courts, these Sunday laws have been upheld, and are now firmly established as constitutional and valid. Any modification, therefore, must come from the legislative, and not the judicial, branch of government.

Should the demands of our cosmopolitan population for more liberal Sunday legislation be granted?

In the world's destiny the American continent was reserved, that here a nation might begin its career with an advanced development in matters civil and religious, untrammelled by custom and unhampered by tradition. To this country our forefathers came, not so much to bring the institutions of their home states, as is usually done by peoples occupying new territory, as to get away from those institutions. Here they established a new order of things, the result of which has been a great nation, to which the eyes of all the world now turn as the leader in constitutional government and personal liberty. And the same spirit, which animated the founders of our nation, continues to bring those of “all nations, and kindreds, and peoples, and tongues” to our shores. They come seeking a new and better country. They would find the freedom, protection and prosperity of institutions peculiarly American. Why, then, should we be asked to alter, for their benefit, these institutions, to make them conform to the conditions which they have left, and the results of which they have endeavored to escape? No one would contend that this should be done in the form of our government, or that we should abolish the observance of our patriotic days, at their demand. Why, therefore, should this be done with the American Sabbath, which has been a recognized institution of this country from its inception? It is said that the first law ever passed here was for the observance of Sunday—an enactment of the Virginia Colony in 1617, three years before the Pilgrims landed at Plymouth.

Our foreign element constitutes a comparatively small proportion

of our population. Why, therefore, should they determine our policy? Moreover, this demand, we think, does not come from the better element of this minority.

Bishop Potter has said: "It is as utter impertinence for the German or the Frenchman, for the Jew or the Mohammedan, to come here demanding that we should waive the customs, and repeal the laws that hallow our Lord's day, as that we should surrender our language for the dialect of the Black Forest, or our marriage relations for the domestic usages of the Sultan."

We do not want, nor should we encourage, a cosmopolitan population. We welcome all good citizens to our hospitable shores; and we do not ask that they forget the homes of their nativity; but we wish them to cast in their lot with us as Americans when they abide with us upon American soil. Let us not, however, be blinded by national pride, which goeth before destruction. Let us gather what of good we may from the experiences of other peoples; but let us adopt it because of no demand, save that of wisdom and experience. Is there anything in the experience of the nations which have a holiday and work-day Sabbath, or in the conditions which it fosters, which would lead us to emulate their example? We think not. If we must learn from other peoples, let us take our lessons from London, from Edinburgh, or from Toronto, rather than from Paris, Berlin, or Rome.

Are our Sunday laws wise and beneficent, and promotive of the best interests of our people? If so, surely they should not be changed. That a weekly rest-day is needful to our highest development, and to our welfare and happiness, our individual experiences should be enough to convince us. And when we likewise find, in the utterances of our statesmen, our philosophers, and our judges, this same great principle, we cannot doubt its truth and wisdom.

It may be said that the demand is for amusement, rather than work, on the Sabbath day. But the result is the same; for where one is entertained by public amusement, some one is at work to furnish that amusement. And where the observance of the day is broken by such amusements, other labor soon follows, as the experiences of other nations teach us. The laboring man who demands his public amusement on the Sabbath day, forgets that on principle and experience a work-day must follow. For what reason or justice is there in allowing the proprietor of public amusements, or the

seller of luxuries, to pursue their callings, for gain, on this day, while the owner of the factory and the vendor of the necessities of life are required to close their places of business?

Mr. Justice Field, when upon the Supreme Court bench of California, in a dissenting opinion, which was afterwards adopted as the opinion of that court, speaking of the Sunday law then in force in that state, uses this language, which has been twice quoted with approval by the Supreme Court of the United States:

"Its requirement is a cessation from labor. In its enactment, the legislature has given the sanction of law to a rule of conduct, which the entire civilized world recognizes as essential to the physical and moral well-being of society. Upon no subject is there such a concurrence of opinion, among philosophers, moralists and statesmen of all nations, as on the necessity of periodical cessation from labor. One day in seven is the rule, founded in experience, and sustained by science. . . . The prohibition of secular business on Sunday is advocated on the ground that by it the general welfare is advanced, labor protected, and the moral and physical well-being of society promoted."⁴

Mr. Justice Strong observes: "The first settlers of this country were a body of select men. They were profoundly impressed by the conviction that a weekly Sabbath was essential to the highest welfare of the communities which they established, and they therefore enacted laws to enforce a proper observance of that day. . . . The Sabbath so observed, no one can doubt, contributed largely to the formation of that character which has stood us in so much stead in our own history, and which has been the admiration of the world."

Mr. Blackstone says of the Sabbath, that "corruption of morality usually follows its profanation;" that it is "of admirable service to a state considered merely as a civil institution."

Mr. Gladstone declares: "I have myself, in the course of a laborious life, signally experienced both its mental and physical benefits. I can hardly overstate its value in this view, and for the interest of the working men of this country, alike in these and in other yet higher respects, there is nothing I more anxiously desire than that they should more and more highly appreciate the Chris-

⁴ *Ex parte Newman*, 9 Cal. 902; *Ex parte Andrews*, 18 Cal. 678; *Hennington v. Georgia*, 163 U. S. 299; *Petit v. Minn.*, 177 U. S. 164.

tian Day of Rest." Macaulay and Edmund Burke bear similar testimony.

DeTocqueville says: "France must have your American Sabbath or she is ruined."

Humbolt, the German naturalist, declares: "It is as unreasonable as inhuman to work beyond six days weekly."

The Supreme Court of Georgia uses the following language, which is quoted with approval by the Supreme Court of the United States: "Leisure is no less essential than labor to the well-being of man. Short intervals of leisure at stated periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for introspection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals. They learn how to be, and come to realize that being is quite as important as doing."⁵

Dr. Crafts, in his work, "The Sabbath for Man," after a discussion of the Sabbath laws with reference to personal liberty, concludes that such statutes are consistent with liberty, in that they are laws for the prevention of cruelty to animals, for the preservation of health, for increasing the national wealth, for harmonizing the relations of capital and labor, for the protection of the home, for the prevention of crime, for the protection of one of the chief historic institutions of the nation, in that they are, in short, laws of national self-preservation.

Dr. Lewis, in his book on "Sunday Legislation," contends that rest on Sunday should be "permissive and not compulsory." In regard to this theory Mr. Justice Field says: "The position assumes that all men are independent, and at liberty to work whenever they choose. Whether this is true or not in theory, it is false in fact; it is contradicted by every day's experience."

Testimony from such sources as these can leave no doubt as to the wisdom and beneficence of our legislation to secure to our people a weekly day of rest; and that such an institution is a sacred trust which we should ever carefully guard, and transmit unimpaired.

If a rest day is needed anywhere, it is peculiarly so in this coun-

⁵ *Hennington v. Georgia*, 90 Ga. 396; s. c., 163 U. S. 299.

try, where men live faster and work under greater tension, in the strenuous spirit of American life, than in any other land.

Human nature cannot stand everything. The body must have rest from labor, and the mind relief from care. And so closely is the moral nature allied to the physical, that it is more susceptible to evil influence when not supported by a strong physique and a vigorous mind.

Instead of heeding the demand for more activity, we should rather harken unto the cry of tired humanity: "Oh that I had wings like a dove! for then would I fly away, and be at rest."

And is not man's higher, moral, nature worthy of some consideration at the hands of the nation? Character is the foundation of national, as well as individual, stability. Is there to be no time set apart to cultivate what is best in man? The development of character requires meditation as well as activity.

Our own consciousness teaches us that there is within us something belonging to the spirit realm, something apart from the flesh, something filled with aspirations after higher things than what we shall eat and wherewithal we shall be clothed, something tempting us to truer manhood and better citizenship. In the making and maintaining of a nation, is not this element of man's nature to be taken into account, and a time given for its development?

Whether there is a religious element in our Sunday laws or not, religion is by no means foreign to our jurisprudence. Under our institutions it is not conceived that a man should enter upon the duties of a high public trust without an appeal to God to witness the faithful discharge of the obligations of his office. Witnesses in our courts of justice must needs qualify themselves by an oath before the Supreme Being, the dispenser of retributions and rewards, that they may truly testify in the affairs between man and man. Are there higher functions of citizenship than these? And is the state to take no thought, and exercise no control, in preparing its citizens for the discharge of these sacred obligations which it exacts of them? Who will say that the state is not competent to designate a time in which man may be encouraged to the attainment of a proper realization of his relationship to God, when upon that conception rests the very official life of our nation, and the due administration of our laws? If such an appreciation of man's responsibility to God is *necessary* to the exercise of these highest functions

of citizenship, can it be otherwise than beneficial in all of the relationships of life?

Mirabeau uttered this great truth when he said: "God is as necessary as liberty to the French people."

If what we have said is true, and it must be true, it would seem to follow that the Fourth Commandment of the Decalogue, both as a religious injunction, turning man to God, and as an economic statute, requiring rest from toil, has as much place in our civil law as have the Sixth, Seventh, Eighth, and Ninth Commandments.

Washington said: "Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

Under no conditions can man comprehend so well something of "individual responsibility to God"—which Webster calls the "greatest thought"—as amid the calm of a quiet, restful day; or when tempted by inviting bells to the house of God, or when summoned by the call to morning or evening prayer, or when constrained by the law written in the Gentile heart, or portrayed in nature's book, to the worship of the Great Creator, by whatever name he may be known, or perchance to offer sacrifice at the altar of "The Unknown God;" for even such homage is not without its effect upon human conduct.

Let us preserve such a day for the refreshing, for the upbuilding, and for the perfecting of the citizen in mind, in body, and in spirit. Let us not, in these latter times, in the pride of our national strength, or at the behest of the stranger within our gates, remove this ancient landmark which our fathers have set; but rather let us, whatever be our faith, unite in this petition to the God of our civil law, upon whom we as a nation are wont to call, and in whom "we trust:"

" Judge of the Nations, spare us yet,
Lest we forget—lest we forget ! "